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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re)	Case No. 08-15509-B-7
Francisco Reyes Jacuinde,)	
)	
Debtor.)	
_____)	
Ruben Mendes,)	Adversary Proc. No. 08-1238
)	
Plaintiff,)	
)	
v.)	
Francisco Reyes Jacuinde,)	
)	
Defendant.)	
_____)	

**MEMORANDUM DECISION REGARDING REQUEST FOR
DEFAULT JUDGEMENT ON COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata and claim preclusion.

Steven M. Koch, Esq., appeared on behalf of plaintiff, Ruben Mendes. There was no appearance on behalf of the debtor, Francisco Reyes Jacuinde.

Before the court is a motion (the “Motion”) by the plaintiff, Ruben Mendes (“Mendes”) for entry of a default judgment against defendant, Francisco Reyes Jacuinde (“Reyes”) in this adversary proceeding to determine dischargeability of a debt under 11

1 U.S.C. § 523(a)(2)(A).¹ Reyes did not respond to the complaint and his default has been
2 entered. Neither did Reyes respond to the Motion nor appear at the noticed hearing. After
3 the hearing, Mendes' counsel was given an opportunity to submit additional evidence
4 regarding the nature of Mendes' contract and claim for damages and the Motion was
5 taken under submission.

6 Prior to this bankruptcy, Reyes entered into an agreement with Mendes to remodel
7 Mendes' home in Terra Bella, California.² Reyes affirmatively represented himself to be
8 a licensed contractor, when in fact he was not, and there were numerous problems with
9 his work. Mendes prayed in the complaint for disgorgement of monies which had already
10 been paid to Reyes, a remedy available under California Business & Professions Code
11 § 7031(b). In this Motion, Mendes changed his theory of relief and now requests a
12 nondischargeable judgment for compensatory damages based on the estimated cost of
13 remediation. In the complaint, Mendes also prayed for an order invalidating a mechanic's
14 lien which Reyes recorded against Mendes' home, however, that issue was not addressed
15 in the Motion and is deemed abandoned. For the reasons set forth below, Mendes'
16 Motion will be denied and the complaint will be dismissed.

17 This memorandum contains findings of fact and conclusions of law required by
18 Federal Rule of Civil Procedure 52(a), made applicable to this adversary proceeding by
19 Federal Rule of Bankruptcy Procedure 7052. The bankruptcy court has jurisdiction over
20 this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 523 and General Orders 182 and
21 330 of the U.S. District Court for the Eastern District of California. This is a core
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23 ¹Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy
24 Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-
25 9036, as enacted and promulgated on or *after* October 17, 2005, the effective date of The
26 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20,
2005, 119 Stat. 23.

27 ²In the complaint, Mendes alleges that Reyes contracted for the construction of Mendes'
28 home, but the Motion and other pleadings and exhibits suggest that the work was for remodel of
the home.

proceeding as defined in 28 U.S.C. §157(b)(2)(I).

Background and Findings of Fact.

The following facts are supported by well-pled factual allegations in the complaint and by evidence offered in support of the Motion. In June 2006, Mendes and Reyes entered into an agreement whereby Reyes would provide the labor and materials for a substantial remodel of Mendes' home (the "Remodel Project"). Mendes agreed to let Reyes do the Remodel Project in reliance upon, *inter alia*, Reyes' false representations that (1) he was a licensed general contractor; and (2) he was sufficiently experienced and competent to do the work properly. Reyes actively concealed the fact that he was not licensed and even falsified documents to suggest that he was.

In support of this Motion, Mendes submitted a copy of a one-page document, prepared by Reyes (exhibit "A"), listing the work to be done for "Ruben Mendez" (sic) along with the estimated cost of materials and labor for the Remodel Project (the "Work List"). The Work List included site work, cement work, framing and finish work, rough and finish plumbing, electrical work and carpeting.³ The total amount which Mendes agreed to pay for the Remodel Project, as detailed on the Work List, was \$154,570.

Reyes began working on the Remodel Project in October 2006.⁴ When Reyes sought a progress payment, Mendes told Reyes that his bank would need a receipt with Reyes' license number. Reyes submitted a description of site work on notepaper with a printed letterhead, "Reyes Handyman," which listed his address and a purported license number (exhibit "B"). Thereafter, Reyes submitted requests for progress payments on the

³Mendes alleged in paragraph 7 of his complaint that he and Reyes entered into a "written contract" for the Remodel Project. However, the Work List had no description of the Remodel Project, it did not contain Reyes' name, was not signed, and had no terms, conditions, specifications, or construction plans attached to it.

⁴Mendes alleged in paragraph 6 of his declaration that Reyes commenced work on the Remodel Project "Shortly after November 1, 2006." However, the first invoice from Reyes (exhibit "B") is dated October 11, 2006, and the first payment order submitted to Sierra Mortgage is dated October 13, 2006.

1 mortgage company's forms. Altogether, Mendes paid \$73,893.08 for work performed
2 and materials supplied on the Remodel Project.⁵

3 Mendes did not authorize payment to Reyes for the full amount of work performed
4 on the Remodel Project and in July 2007, Reyes filed a mechanic's lien against Mendes'
5 home for the amount of \$47,000 (the "Mechanic's Lien"). However, the record does not
6 show that Reyes ever commenced litigation to enforce the Mechanic's Lien. Also, in July
7 2007, Reyes was arrested and charged by the Tulare County District Attorney for
8 unspecified activities related to being an unlicensed contractor. Mendes discovered that
9 Reyes was not a licensed contractor in August 2007. It is not clear from the record
10 whether Reyes had finished the Remodel Project by that time.⁶

11 On September 5, 2008, Reyes filed a petition for relief under chapter 7 of the
12 Bankruptcy Code. The bar date for objections to discharge and complaints to determine
13 dischargeability was set as December 1, 2008.⁷ In November 2008, Mendes timely filed
14 this adversary proceeding seeking a determination that (1) Reyes committed fraud by
15 falsely representing his status as a licensed contractor, and (2) Mendes' claim is
16 nondischargeable pursuant to § 523(a)(2)(A). The complaint pleads one claim for relief;
17 a claim for disgorgement of monies already paid to Reyes pursuant California Business
18 and Professions Code § 7031(b).⁸ Mendes also alleged that the Mechanic's Lien is "false
19

20 ⁵On October 15, 2008, Mendes filed a proof of claim for disgorgement based on
21 California Business and Professions Code § 7031(b) in the amount of \$95,287.05. However, in
22 support of this Motion, Mendes submitted a declaration under penalty of perjury stating at
23 paragraph 11 that Reyes had been paid approximately \$73,893.08 through the mortgage and
escrow companies. The Motion does not address or explain this discrepancy.

24 ⁶Mendes states in his declaration at paragraph 12, "Mr. Reyes Jacuinde did not complete
25 the work in a satisfactory and workmanship manner."

26 ⁷Reyes' discharge was entered on December 30, 2008, subject to the outcome of this
27 adversary proceeding.

28 ⁸California Business and Professions Code § 7031(b) states:

(continued . . .)

1 and not privileged because [Reyes] did not have a contractor's license." The complaint
2 prays for, but did not separately plead, a claim for declaratory relief or quiet title with
3 regard to the Mechanic's Lien. Reyes' default was entered on December 30, 2008, and
4 this Motion was filed January 29, 2009.

5 In the Motion, Mendes abandons the claim for disgorgement of monies paid
6 pursuant to California Business and Professions Code § 7031(b). Mendes now requests
7 compensatory damages in the amount of \$32,019.15, representing the "additional costs
8 . . . to complete the work" (Mendes' declaration at paragraph 12). The Motion is
9 supported by a declaration from Mendes and a written estimate from "William Stimpel,
10 Remodeling Construction," dated January 26, 2009 (exhibit "C"; the "Stimple Estimate").
11 The Stimple Estimate itemizes various repairs and other items needed to complete the
12 Remodel Project as contemplated by the Work List. In the Motion, Mendes prays only
13 for a determination that the debt for compensatory damages, as set forth in the Stimple
14 Estimate, is nondischargeable.

15 **Issues.**

16 The issues before the court are (1) whether the state law claim for disgorgement,
17 originally pled in the complaint, is nondischargeable under § 523(a)(2)(A); (2) whether
18 Mendes may obtain a judgment by default for compensatory damages on a totally
19 different claim for relief than the one originally pled in the complaint; (3) whether
20 Mendes has met his burden of proof as to the essential element of damages; and (4)
21 whether Mendes' prayer for expungement of the Mechanic's Lien is properly before the
22 court.

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26 (. . . continued)

27 [A] person who utilizes the services of an unlicensed contractor
28 may bring an action in any court of competent jurisdiction in this
state to recover all compensation paid to the unlicensed contractor
for performance of any act or contract.

1 **Analysis and Conclusions of Law.**

2 **A. The Law of Default Judgments.**

3 The entry of default judgment is a two-step process and the court has an
4 affirmative obligation to review the underlying factual allegations and supporting
5 evidence to make sure the plaintiff can prove his *prima facie* case. Default judgments are
6 governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy
7 proceedings by Federal Rule of Bankruptcy Procedure 7055. In order to obtain a default
8 judgment establishing the nondischargeability of a debt, a two-step process is required:
9 (1) entry of the party's default, and (2) entry of a default judgment. Fed.R.Civ.P. 55(a)
10 and (b); *Brooks v. United States*, 29 F.Supp.2d 613, 618 (N.D. Cal. 1998), *aff'd mem.*,
11 162 F.3d 1167 (9th Cir.1998). The bankruptcy court is given broad discretion to enter a
12 default judgment in an adversary proceeding, however, the plaintiff is not entitled to such
13 judgment as a matter of right. *Cashco Financial Services, Inc. v. McGee (In re McGee)*,
14 359 B.R. 764, 771 (9th Cir. BAP 2006), citing *Kubick v. FDIC (In re Kubick)*, 171 B.R.
15 658, 659-60 (9th Cir. BAP 1994).

16 The court is merely permitted, but is not required, to draw inferences in a default
17 judgment context. "In order to do justice, a trial court has broad discretion to require that
18 a plaintiff *prove up* even a purported *prima facie* case by requiring the plaintiff to
19 establish the facts necessary to determine whether a valid claim exists that would support
20 relief against the defaulting party." *In re McGee*, 764 B.R. at 773 (emphasis original),
21 citing *Wells Fargo Bank v. Beltran (In re Beltran)*, 182 B.R. 820, 823 (entry of default
22 does not automatically entitle a plaintiff to a default judgment, regardless of the general
23 effect of the entry of a default to deem well-founded allegations as admitted); *Quarré v.*
24 *Saylor (In re Saylor)*, 178 B.R. 209, 212 (9th Cir. BAP 1995) (trial court directed the
25 plaintiff to submit evidence of a *prima facie* case in support of a default judgment).

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1 **B. Dischargeability of the Disgorgement Claim; The Effect of California**
2 **Business and Professions Code § 7131.**

3 In his complaint and proof of claim, Mendes stated a claim for disgorgement of
4 monies already paid to Reyes pursuant to California Business and Professions Code
5 § 7031(b). (See text in footnote 8, *infra.*) Mendes alleged that he paid Reyes and various
6 vendors at least \$95,000 during the course of the Remodel Project. However, a
7 disgorgement claim under the California Business and Professions Code will not support
8 a dischargeability claim under § 523(a)(2)(A) as illustrated in the case, *Ghomeshi v.*
9 *Sabban (In re Sabban)*, 384 B.R. 1 (9th Cir. BAP 2008). In *Sabban*, an unlicensed
10 contractor and homeowner entered into a home improvement contract. The contractor
11 represented himself to be licensed and the homeowner relied on that representation. After
12 problems developed between the parties, the homeowner sued for breach of contract,
13 fraud, and violation of California Business and Professions Code § 7160.⁹ Eventually the
14 trial was held on the § 7160 allegations only. The state court awarded the homeowner
15 statutory damages of \$500, plus attorneys' fees as allowed under the code section, but
16 held that the homeowner had not been damaged under § 7160; the entire amount of
17 \$123,000 paid by the homeowner had been expended on the homeowner's project. The
18 state court did award \$123,000 to the homeowner "in the nature of disgorgement"
19 pursuant to § 7031(b).

20 When the homeowner sued to determine dischargeability of the state court's
21 award, the bankruptcy court ruled that the judgment for disgorgement was dischargeable
22 noting that "§ 7031(b) is 'a regulatory statute about status' and 'not a tort statute about
23 misconduct.'" *Id.* at 4. The BAP observed that the \$123,000 disgorgement award did not
24

25 ⁹California Business and Professions Code section 7160 provides: "Any person who is
26 induced to contract for a work of improvement . . . in reliance on false or fraudulent
27 representations or false statements *knowingly made*, may sue and recover from such contractor
28 . . . a penalty of five hundred dollars (\$500), plus reasonable attorney's fees, in addition to any
damages sustained by him by reason of such statements or representations made by the
contractor" (Emphasis added.)

1 stem from the contractor's fraud or misrepresentation; "The statutory disgorgement did
2 not require a showing of fraud; section 7031 is neutral as to fraudulent intent" *Id.* at
3 7.

4 The facts of this case are similar to the pertinent facts in *Sabban*. Mendes may
5 have a right to disgorgement under state law, but that right was based on Reyes' status as
6 an unlicensed contractor, not on Reyes' fraud or misrepresentation. Mendes' claim for
7 disgorgement based on California Business & Professions Code § 7031(b) is not excepted
8 from discharge.

9 **C. The Motion Seeks Relief Which Was Not Pled in the Adversary**
10 **Proceeding.**

11 Federal Rule of Civil Procedure 54(c) applies to adversary proceedings pursuant to
12 Federal Rule of Bankruptcy Procedure 7054. Rule 54(c) specifically limits the scope of a
13 default judgment. Rule 54(c) serves to protect the rights of defendants to due process by
14 limiting the relief granted against a defaulting defendant to the relief that the defendant
15 was properly notified would be at issue. "A default judgment must not differ in kind
16 from, or exceed in amount, what is demanded in the pleadings." Interpreting Rule 54(c),
17 the Ninth Circuit Bankruptcy Appellate Panel has stated:

18 A court may not, without the consent of all persons affected, enter a
19 judgment which goes beyond the claim asserted in the pleadings.
20 "Unless all parties in interest are in court and have voluntarily
21 litigated some issue not within the pleadings, the court can consider
22 only the issues made by the pleadings, and the judgment may not
23 extend beyond such issues nor beyond the scope of the relief
24 demanded." *Sylvan Beach, Inc. v. Koch*, 140 F.2d 852, 861 (8th Cir.
1944). The relief must be based on what is alleged in the pleadings
and justified by plaintiff's proof, which the opposing party has had
an opportunity to challenge. "Rule 54(c) creates no right to relief
premised on issues not presented to, and litigated before, the trier."
Dopp v. HTP Corp., 947 F.2d 506, 518 (1st Cir. 1991).

25 *Delaney-Morin v. Day (In re Delaney-Morin)*, 304 B.R. 365, 370-71 (9th Cir. BAP 2003).

26 Here, the complaint served on Reyes informed him that Mendes was seeking to
27 except from discharge a disgorgement claim, arising under California Business and
28 Professions Code § 7031(b), for the money paid to Reyes. As explained above,

1 California Business and Professions Code § 7031(b) will not support a claim of
2 nondischargeability under § 523(a)(2)(A). Although Mendes alleged fraud in the
3 complaint, a disgorgement claim under § 7031(b) is not dependent upon any showing of
4 fraud, it is merely a function of Reyes' status as an unlicensed contractor. After entry of
5 Reyes' default, Mendes completely changed his theory of recovery and now requests a
6 judgment against Reyes for damages proximately caused by the alleged fraud. Mendes
7 seeks a judgment for compensatory damages, not disgorgement. Constitutional due
8 process requires that a defendant receive proper notice and an opportunity to defend the
9 claims asserted against him in a court of law. Rule 54(c) was enacted to satisfy the due
10 process requirements in a default case. Accordingly, Mendes may not "change horses" in
11 the middle of the stream, and spring a new theory for relief on Reyes after his default has
12 been taken.

13 **D. The Elements of a Claim Under § 523(a)(2)(A): Actual Fraud.**

14 Section 523(a)(2)(A) excepts from discharge any debt for money, property,
15 services . . . to the extent obtained by false pretenses, a false representation, or actual
16 fraud. A creditor must establish five elements by a preponderance of the evidence in
17 order to establish that a debt is nondischargeable under § 523(a)(2)(A):

- 18 1. Misrepresentation, fraudulent omission or deceptive conduct
19 by the debtor;
- 20 2. Knowledge of the falsity or deceptiveness of his statement or
21 conduct;
- 22 3. An intent to deceive;
- 23 4. Justifiable reliance by the creditor on the debtor's statement
24 or conduct; and
- 25 5. Damage to the creditor proximately caused by its reliance on
26 the debtor's statement or conduct.

27 "To be actionable, the debtor's conduct must involve moral turpitude or intentional
28 wrong; mere negligence, poor business judgment or fraud implied in law (which may
exist without imputation of bad faith or immorality) is insufficient." *In re Shallow*, 393
B.R. 277, 286 (Bankr. D. Conn. 2008) (citations omitted).

1 In the case, *McCain v. Fuselier (In re Fuselier)*, 211 B.R. 540 (Bankr. W.D. La.
2 1997), the court found a builder's debt to the homeowners was excepted from discharge.
3 As is this case, the debtor in *Fuselier*, who had never been licensed in Louisiana,
4 presented a bid with a fraudulent license number and accepted a project to construct a
5 residence for the homeowner. The distinction between *Fuselier* and the case at hand,
6 however, is that in *Fuselier* the debtor obtained funds from the homeowner by falsely
7 representing that money was needed for material, but he actually used the money for
8 unrelated purposes. In addition, the debtor's failure to pay subcontractors resulted in
9 construction liens being filed against the house which had to be satisfied by the
10 homeowners.

11 Here, there was no evidence that the funds paid to Reyes were used for any
12 improper purpose. Indeed, Mendes submitted numerous receipts showing payment for
13 materials used on the Remodel Project. Likewise, Mendes stated that he was present and
14 saw Reyes working on the job daily. No evidence was presented that Reyes left vendors
15 or subcontractors unpaid so as to cause a liability to Mendes.

16 **E. Mendes Has Not Suffered Any Damages as a Result of Reyes'**
17 **Misrepresentation.**

18 Based on the record, the court is persuaded that: (1) Reyes falsely represented that
19 he possessed a valid California contractor's license; (2) Reyes knew that this
20 representation was false since he deliberately fabricated documents to suggest that he was
21 a licensed contractor; (3) Reyes intended to induce Mendes into hiring him for the
22 Remodel Project; and (4) Mendes justifiably relied upon that representation. The
23 problem here arises with Mendes' efforts to prove the fifth element of his claim, that he
24 suffered *damages as a consequence of that reliance*. In order to except his claim from
25 discharge, Mendes had to present evidence to show that he was actually damaged by his
26 reliance on Reyes' false statements.

27 Damages are an essential element of a § 523 claim for relief. In the case, *In re*
28 *Sabban*, 384 B.R. at 7, n.8, that court explained that actual injury is prerequisite to a

1 determination that a debt is excepted from the debtor's discharge.

2
3 Courts have excepted debts from discharge where the debtor
4 has misrepresented the status of his or her professional
5 license, *but only to the extent the creditors were actually*
6 *injured because of the misrepresentations.* See *Sinha v. Clark*
7 (*In re Clark*), 330 B.R. 702 (Bankr.C.D.Ill. 2005) (applying
8 section 523(a)(2)(A) to except from discharge amounts paid
9 by homeowners to correct construction defects caused by
10 contractor who had misrepresented his licensing status, but
11 granting discharge to other portions of state court judgment
12 against debtor/contractor); *McCain v. Fuselier (In re*
13 *Fuselier)*, 211 B.R. 540 (Bankr.W.D.La. 1997) (finding that
14 creditors suffered damages from debtor's substandard work in
15 constructing home and that creditors would not have hired
16 debtor but for his misrepresentations as to his licensing status
17 and expertise, court excepted damages from discharge under
18 section 523(a)(2)(A)); *McDaniel v. Border (In re McDaniel)*,
19 181 B.R. 883 (Bankr.S.D.Tex.1994) (excepting from
20 discharge damages arising from defects in architectural work
21 where architect had misrepresented the status of his license).

22 *Id.* (emphasis added).

23 Here, Mendes agreed with Reyes, as documented by the Work List, to pay
24 \$154,570 for the Remodel Project. Mendes' declaration states that he actually paid to
25 Reyes, and to various vendors, the sum of \$73,893.08. In support of the Motion, Mendes
26 has shown that he will incur an additional expense of \$32,019 to repair and complete the
27 Remodel Project as outlined in Stimple Estimate. Thus, the total cost of the Remodel
28 Project, after remediation by William Stimpel, will be approximately \$105,909. This is
approximately \$48,661 less than the \$154,570 that Mendes originally agreed to pay.

29 Mendes alleges that he was fraudulently induced to enter into a contract. But
30 reliance on false representations alone does not result in damages. Mendes' alleged
31 damages flow from Reyes' breach and negligent performance of the contract which
32 Mendes bargained for, not from the fraudulent inducement. Contract damages are in the
33 nature of compensation. Pursuant to California Civil Code § 3300, "[f]or the breach of an
34 obligation arising from contract, the measure of damages . . . is the amount which will
35 compensate the party aggrieved for all the detriment proximately caused thereby, or
36 which, in the ordinary course of things, would be likely to result therefrom." Here,

1 Mendes has not shown any “detriment proximately caused” by Reyes’ fraud.

2 Mendes has already been made whole through “self-help”: Mendes did not pay
3 Reyes for at least \$47,000 of the work performed on the Remodel Project as evidenced by
4 Mendes’ reference to the Mechanic’s Lien. Under California law, Reyes has no right to
5 bring an action to force Mendes to pay any more money for the work that was done.¹⁰
6 Mendes offers no evidence to show that Reyes fraudulently represented what the
7 Remodel Project should cost. Mendes offers no evidence to show that the value of his
8 house was diminished beyond the cost of remediation. When William Stimple repairs
9 and completes the Remodel Project, Mendes will have the full “benefit of his bargain.”
10 Yet Reyes will have saved a substantial amount of money. Accordingly, Mendes has not
11 proven each of the § 523(a)(2)(A) elements of fraud – he has not proven damages.

12 **F. Mendes’ Prayer for Declaratory Relief Regarding Mechanic’s Lien.**

13 In the complaint, Mendes also prays for a determination that the mechanic’s lien,
14 filed by Reyes in July 2007, is “invalid and should be expunged.” This issue, declaratory
15 relief, was not separately pled as a claim for relief in the adversary proceeding and was
16 not addressed in the Motion. It is therefore deemed abandoned. Since such liens expire
17 by law, his issue was also rendered moot by the passage of time.¹¹

18 **Conclusion.**

19
20 ¹⁰California Business and Professions Code § 7031(a) states in pertinent part:

21 [N]o person engaged in the business or acting in the capacity of a
22 contractor, may bring or maintain any action, or recover in law or
23 equity in any action, in any court of this state for the collection of
24 compensation for the performance of any act or contract where a license is
25 required by this chapter without alleging that he or she was a duly licensed
contractor at all times during the performance of that act or contract

26 ¹¹The statute of limitations on an action to foreclose a mechanic’s lien is 90 days after
27 recording the claim of lien, or, under certain circumstances, one year. Failure to bring an action
28 within that time renders the lien automatically null and void and of no further force and effect.
The failure to institute a foreclosure proceeding within the statutory time serves to unbind the
property even as to recorded lien claims. Cal.Civ.Code § 3144.

1 Based on the foregoing, this court cannot enter a judgment by default based on a
2 theory, compensatory damages, which was not pled in the complaint. While clearly there
3 were problems with Reyes' competence and integrity, the court is persuaded that Mendes
4 was not damaged by either. In the absence of actual damages, Mendes does not have a
5 nondischargeable claim against Reyes within the limitations of § 523(a)(2)(A).
6 Accordingly, the Motion will be denied and the complaint will be dismissed.

7 Dated: April 16, 2009.

8 /s/ W. Richard Lee

9 W. Richard Lee

10 United States Bankruptcy Judge
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